

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 05/17/01.
  - b. The request was received on 04/12/01.

## **II. EXHIBITS**

1. Requestor:
  - a. Initial Submission of TWCC-60
    1. UB-92s
    2. Re-audit letter from the carrier dated, 11/21/01
    2. Appeal letter dated, 11/06/01
  - b. Additional documentation received on 06/24/02
    1. Position Statement
    2. Example EOB(s) from other carriers
    3. Medical Records
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. Response to a Request for Dispute Resolution dated 07/11/02
  - b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/28/02. Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 06/28/02. The response from the insurance carrier was received in the Division on 07/11/02. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

### III. PARTIES' POSITIONS

1. Requestor: Letter dated 06/18/02  
“(Carrier) has unfairly reduced our bill when other workers’ compensation carriers have established that our charges are fair and reasonable because they are paying 85%-100% of our billed charges and group carriers are allowing 100% of our billed charges. Enclosed are examples of bills for the same [sic] of treatment of other patients and their insurance companies [sic] interpretation of fair and reasonable as shown by the amounts paid.”
2. Respondent: Letter dated, 07/11/02  
“The requestor believes it should be paid more because other carriers are paying either 100% or some percentage of its billed charges. As evidence of this the requestor submitted EOBs. SOAH, however, has stated that EOBs are some evidence of fair and reasonable but not the evidence, the evidence being the method by which the provider determined that its charged amount is fair and reasonable (not just usual and customary) *and* consistent with statutory standards outlined In the Labor Code.”

### IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 05/17/01.
2. The carrier denied the bill based on fair and reasonable.
3. The provider had indicated on their disputed services table that CPT code 87390, dos 05/04/01, was also in dispute. However, there is no bill for this dos in the packet. Therefore, this decision will not address that dos.

### V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable.

The provider has submitted EOBs from other carriers as examples of “fair and reasonable” reimbursement for same or similar services. These EOBs were paid at varying percentages of the billed amount. Regardless of the carrier’s methodology, response, or lack thereof, the burden is on the provider to demonstrate and justify that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (b) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement. No further reimbursement is recommended.

The above Findings and Decision are hereby issued this 12th day of August 2002.

Carolyn Ollar, RN, BA  
Medical Dispute Resolution Officer  
Medical Review Division  
CO/co

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers’ Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.